

LENNIE F. BARNES)	
Claimant)	
)	
VS.)	
)	
CONCRETE UNITED, LLC.)	
Respondent)	Docket No. 1,021,865
)	
AND)	
)	
AMERICAN HOME ASSURANCE CO.)	
Insurance Carrier)	
)	
AND)	
)	
KS. WORKERS COMPENSATION FUND)	

For purposes of this appeal, the record includes the transcript of the motion hearing held on July 28, 2009, before Administrative Law Judge (ALJ) Marcia L. Yates Roberts, as well as all documents on file with the Division of Workers Compensation.

ISSUES

The respondent filed a motion to dismiss the Kansas Workers Compensation Fund (KWCF) from these proceedings. After a motion hearing, the ALJ, in an order dated September 16, 2009, and designated as a Preliminary Decision, denied the motion. The respondent filed an application for review requesting the Board to review that Preliminary Decision.

However, before the Board may address the issue that was before the ALJ, it first must be determined that the Board has jurisdiction over this matter at this juncture of the proceeding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record the Board finds that it does not have jurisdiction to review the issue raised at this time. Therefore, the ALJ's Preliminary Decision remains in full force and effect.

The decision rendered by the ALJ denying the respondent's motion to dismiss is an interlocutory order and subject to modification at the time of the final award. Had the ALJ granted the respondent's motion, that order would have been considered final in nature and subject to review by the Board pursuant to K.S.A. 44-551 as with any other final order or decision.

The Board finds, after examining both K.S.A. 44-551 and K.S.A. 44-534a, that the subject Preliminary Decision is neither a final order which can be reviewed by the Board pursuant to K.S.A. 44-551, nor an issue delineated in K.S.A. 44-534a as appealable from a preliminary hearing. The Preliminary Decision before us pertains to an interlocutory matter regarding the liability of the KWCF over which the ALJ has authority if called upon during these proceedings.

AWARD

WHEREFORE, it is the decision of the Board that the respondent's appeal is dismissed and the Preliminary Decision of Administrative Law Judge Marcia L. Yates Roberts dated September 16, 2009, remains in full force and effect.

IT IS SO ORDERED.

Dated this _____ day of October 2009.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Lennie F. Barnes, Claimant, 4103 Lawrence Court, Kansas City, KS 66106
Jodi J. Fox, Attorney for Respondent and its Insurance Carrier
Jeffery S. Austin, Attorney for KWCF
Marcia L. Yates Roberts, Administrative Law Judge